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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 6, 2003

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-01318

Ex Parte: In the matter of
Adopting Rules Governing Claims-
Made Liability Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

Section 38.2-2229 of the Code of Virginia provides that the Commission may issue rules regarding claims-made liability insurance policies.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed rules entitled "Rules Governing Claims-Made Liability Insurance Policies," which are to be published in Chapter 335 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-335-10 through 14 VAC 5-335-60.

The Bureau has recommended to the Commission that the proposed rules be adopted with an effective date of March 1, 2003.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed rules be attached hereto and made a part hereof as rules to be designated 14 VAC 5-335-10 through 14 VAC 5-335-60.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed rules shall file such comments or hearing request on or before February 27, 2003, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-01318.

(3) If no written request for a hearing on the proposed rules is filed on or before February 27, 2003, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed rules, may adopt the rules proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister, who forthwith shall give further notice of the proposed rules by mailing a copy of this Order, together with a draft of the proposed rules, to all insurers licensed by the Commission to write liability insurance, other than automobile liability insurance, in the Commonwealth of Virginia.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before January 8, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed rules on the Commission's website: <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 335.

RULES GOVERNING CLAIMS-MADE LIABILITY INSURANCE POLICIES.

14 VAC 5-335-10. Scope.

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§ 38.2-117 and 38.2-118 of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury or damage covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to all claims-made liability insurance policies delivered or issued for delivery in this Commonwealth to become effective on or after May 1, 2003.

14 VAC 5-335-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

“Claims-made liability insurance policy” means an insurance policy or endorsement providing coverage for the insured’s liability for injury or damage occurring prior to the termination of coverage but subsequent to any retroactive date, provided the claim for such injury or damage is first made during the policy period or any extended reporting period.

“Extended reporting coverage” means an extension of the time allowed for reporting claims, after termination of claims-made liability coverage, for injury or damage that occurred prior to termination of the coverage and that, except for the

requirement to report claims during the policy period, was otherwise covered by the policy.

“Retroactive date” means the date on or after which injury or damage may occur and be covered under a claims-made liability policy.

14 VAC 5-335-30. Insurers to offer extended reporting coverage.

A. Any insurer that issues or delivers a claims-made liability insurance policy in this Commonwealth shall offer to each named insured extended reporting coverage.

1. The extended reporting coverage shall be offered, in writing, to all named insureds upon termination of claims-made coverage. Termination of claims-made coverage shall include:

- a. Cancellation or non-renewal of the policy by the insurer or the insured;
- b. Advancement of any retroactive date; or
- c. Renewal of the coverage on other than a claims-made basis.

2. The insured shall be allowed at least 30 days, after termination, in which to purchase the extended reporting coverage.

B. Notwithstanding the foregoing, extended reporting coverage does not have to be offered if cancellation or non-renewal of a claims-made policy is due to:

- 1. Non-payment of premium; or
- 2. Failure to comply with terms or conditions of the policy.

C. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this section.

14 VAC 5-335-40. Extended reporting coverage requirements.

A. Each insurer shall offer an unlimited extension of the time allowed to report claims subject to any applicable statute of limitations. However, this shall not prohibit the insurer from also offering other, more limited, extensions of time in which to report claims. The premium charge for extended reporting coverage shall not exceed 200% of the premium for the expiring policy unless such additional premium charge is filed with the Commission in compliance with the delayed effect filing provisions of § 38.2-1912 of the Code of Virginia as if competition is not an effective regulator of rates. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this subsection.

B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting period. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge.

C. When an insurer excludes any existing coverage from a claims-made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated.

14 VAC 5-335-50. Prohibitions.

A. Once purchased by the insured, extended reporting coverage shall not be cancelled by the insurer except for non-payment of premium. No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.

B. The offer of extended reporting coverage by an insurer providing excess or umbrella liability coverage shall not be contingent upon:

1. The continuation of the underlying liability insurance coverage;

2. The purchase of extended reporting coverage for the underlying liability insurance policy; or

3. The type of extended reporting coverage purchased for the underlying liability insurance policy.

C. Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding extended reporting coverage on the basis that other applicable insurance coverage is in effect. However, this shall not prohibit an insurer from applying the extended reporting coverage as excess over such other insurance.

14 VAC 5-335-60. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.